

L. THE PROPOSED REGULATIONS ON THE DISCLOSURE REQUIREMENTS FOR ANNUAL INFORMATION RETURNS AND APPLICATIONS FOR EXEMPTION

by

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1. Introduction

Section 1313 of the Taxpayer Bill of Rights 2 (TBOR2), enacted on July 30, 1996, amended IRC 6104(e) by adding additional publicity and disclosure requirements for organizations described in IRC 501(c) and IRC 501(d). Section 1313 states that the amendments are to apply to requests made on or after the 60th day after the Secretary of the Treasury first issues regulations under the Act. The Service issued proposed regulations, Prop. Regs. 301.6104(e)-0, 301.6104(e)-1, 301.6104(e)-2, and 301.6104(e)-3, Federal Register, Vol. 62, No. 187, p. 50533, on September 26, 1997.

This article discusses the new disclosure rules as interpreted by the proposed regulations, particularly the new requirement that copies be provided upon request, and the exceptions to the requirement.

2. Prior Law

In general, IRC 6103 provides that returns and return information are confidential and, unless otherwise specifically authorized by the Code, cannot be disclosed. IRC 6103(b)(1) defines the term "return" to mean "any tax or information return...filed with the Secretary by, on behalf of, or with respect to any person, and any amendment or supplement thereto, including supporting schedules, attachments, or lists which are supplemental to, or part of, the return so filed."

IRC 6104 specifically authorizes public disclosure of information contained on a tax-exempt organization's annual information return filed under IRC 6033, and a tax-exempt organization's application for tax exemption. Public disclosure is required to be made by the Internal Revenue Service, under IRC 6104(b), by private foundations, under IRC 6104(d) and 6104(e)(2), and under IRC 6104(e), by organizations that are described in IRC 501(c) or 501(d) that are not private foundations.

Before TBOR2, IRC 6104(e)(1) required tax-exempt organizations described in IRC 501(c) or IRC 501(d), except for private foundations, to make a copy of their annual information return available for public inspection. The organization was required to make its return available during the three year period beginning on the filing date of the return. The

filing date for this purpose is the last day prescribed for filing the return including any extension of time granted. The organization was required to allow public inspection at the organization's principal office or, if the organization regularly maintains one or more regional or district offices, a copy of the return must also be made available at each regional or district office.

Prior to its amendment by TBOR2, IRC 6104(e)(2) provided that all tax-exempt organizations make copies of their application for tax exemption (Forms 1023, 1024, or letter application) available for public inspection, as well as any letter or other document issued by the IRS with respect to such application.

Notice 88-120, 1988-2 C.B. 454, sets forth rules and procedures for the public inspection required by IRC 6104(e)(1) and (2). Notice 88-120 provides rules concerning the content of the required disclosures, the required methods of inspection, the place and time of inspection, and the penalties imposed for failure to comply with the public inspection requirements.

Under prior law, an organization was required only to have copies available for public inspection. It was not required to provide or distribute copies. The organization was required to allow the person making inspection to take notes freely during the inspection or, if the requester preferred, allow the requester to photocopy the document on the requester's own photocopying equipment within reasonable constraints of time and place. If the organization did not object to making a photocopy, the organization was allowed to charge up to the per page copying charge stated in section 601.702(f)(5)(iv)(B) of the Internal Revenue Service's Statement of Procedural Rules, as well as postage if the copy was mailed.

IRC 6652(c)(1)(C) imposed a penalty of \$10 per day on any person who failed to meet the requirements of IRC 6104(e)(1) relating to public inspection of annual information returns, for as long as the failure continued, for up to a maximum penalty of \$5,000 on all persons for failures with respect to any one return. IRC 6652(c)(1)(D) imposed a penalty of \$10 per day on all persons who failed to meet the requirements of IRC 6104(e)(2) relating to the public inspection of exemption applications. A willful failure to permit public inspection of annual information returns or an application for tax exemption will result in an additional penalty of \$1,000 per return under the provisions of IRC 6685.

The public disclosure provisions of prior law were discussed in detail in the 1997 CPE, Publicity and Disclosure of Form 990, at pp. 5-15. See also, IRM 7751, Exempt Organizations Handbook, Chapter (50)00, Disclosure Required by Exempt Organizations for a summary of the prior-law disclosure rules.

3. Changes to the Disclosure Provisions Under the Taxpayer Bill of Rights 2

Section 1313 of TBOR2 amended IRC 6104(e)(1)(A), by adding the following requirements:

(ii) upon request of an individual made at such principal office or such a regional or district office, a copy of such annual return shall be provided to such individual without charge other than a reasonable fee for any reproduction and mailing costs.

The amended section also provides that the request may be made in person or in writing. If the request is made in person, a copy must be provided immediately. If made in writing, within 30 days.

TBOR2 also added the following to IRC 6104(e)(2)(A):

upon request of an individual made at such principal office or such a regional or district office, a copy of the material requested to be available for inspection under this subparagraph shall be provided (in accordance with the last sentence of paragraph (1) (A)) to such individual without charge other than reasonable fee for any reproduction and mailing costs.

TBOR2 provides exceptions to the new requirements in new IRC 6104(e)(3). It provides that the requirement that a tax-exempt organization provide a copy of its annual information returns or application for tax exemption

shall not apply to any request if, in accordance with regulations promulgated by the Secretary, the organization has made the requested documents widely available, or, the Secretary determines, upon application by an organization, that such request is part of a harassment campaign and that compliance with such request is not in the public interest.

TBOR2 increased the penalties for failure to allow public inspection and extended them to this new requirement.

TBOR2 imposed new requirements on organizations described in IRC 501(c)(3) to disclose on their annual information return any other excise tax penalties paid during the year under present-law IRC 4911 (excess lobbying expenditures), IRC 4912 (disqualifying lobbying expenditures), or IRC 4955 (political expenditures), including the amount of the excise tax penalties paid with respect to such transactions, the nature of the activity, and the parties involved.

The changes to the penalty provisions and the items disclosable on the annual information return are not addressed in the proposed regulations.

4. The Proposed Regulations

A. Overview

The proposed regulations address three major areas. First, they provide guidance concerning the documents that a tax-exempt organization must make available for public inspection or must supply in response to a request for copies, as well as the place and time for making these documents available for public inspection; conditions that may be placed on requests for copies of documents; and the amount, form and time of payment of any fees that may be charged. Second, the proposed regulations prescribe how an organization can make its application for tax exemption and annual information returns 'widely available'. Third, the proposed regulations provide guidance on the standards that apply in determining whether an organization is the subject of a harassment campaign and on the applicable procedures for obtaining relief.

B. Public Inspection and Distribution of Annual Information Returns and Applications for Tax Exemption.

(1) The General Provisions

Prop. Regs. 301.6104(e)-1(a) provides the basic rules for the public inspection and distribution of annual information returns of tax-exempt organizations other than private foundations and for the public inspection and distribution of applications for tax exemption by all tax-exempt organizations. These rules are based on the requirements set forth in IRC 6104(e)(1) and (2) and Notice 88-120.

(2) Definitions

Prop. Regs. 301.6104(e)-1(b) provides a list of the terms used in IRC 6104(e) and the proposed regulations. The definitions are the same as those used in Regs. 301.6104(a)-1 and

Notice 88-120 but are consolidated into a useful list:

- Tax-exempt organization. The term tax-exempt organization means any organization that is described in IRC 501(c) or IRC 501(d) and is exempt from taxation under IRC 501(a).
- Private foundation. The term private foundation means a private foundation as defined in IRC 509(a).
- Application for tax exemption
 1. The term application for tax exemption includes any prescribed application form (such as Form 1023 or Form 1024), all documents and statements the Internal Revenue Service requires an applicant to file with the form, any statement or other supporting document submitted by an organization in support of its application, and any letter or other document issued by the Internal Revenue Service concerning the application (such as a favorable determination letter or a list of questions from the Internal Revenue Service about the application). For example, a legal brief supporting an application, or a response to questions from the Internal Revenue Service during the application process, is a supporting document.
 2. If no form is prescribed for an organization's application for tax exemption, the application for tax exemption includes
 - a. The application letter and copy of the articles of incorporation, declaration of trust, or other similar instrument that sets forth the permitted powers or activities of the organization;
 - b. The organization's bylaws or other code of regulations;
 - c. The organization's latest financial statements, as of the date the application is submitted, showing assets, liabilities, receipts and disbursements;
 - d. Statements describing the character of the organization, the purpose for which it was organized, and its actual activities;

- e. Statements showing the sources of the organization's income and receipts and their disposition; and
 - f. Any other statements or documents the Internal Revenue Service required the organization to file with, or that the organization submitted in support of, the application letter.
- 3. The term application for tax exemption does not include
 - a. Any application for tax exemption filed by an organization that has not yet been recognized, on the basis of the application, by the Internal Revenue Service as exempt from taxation for any taxable year;
 - b. Any application for tax exemption filed before July 15, 1987 unless the organization filing the application had a copy of the application on July 15, 1987; or
 - c. Any material, including the material listed in Regs. 301.6104(a)-1(i) and information that the Secretary would be required to withhold from public inspection, that is not available for public inspection under IRC 6104.
- Annual information return
 - 1. The term annual information return includes an exact copy of any return filed by a tax-exempt organization pursuant to IRC 6033. It also includes any amended return filed with the Internal Revenue Service after the date the original return is filed. The copy must include all information furnished to the Internal Revenue Service on Form 990, Return of Organization Exempt From Income Tax, or any version of Form 990 (such as Forms 990-EZ or 990-BL except Form 990-T) and Form 1065, as well as all schedules, attachments and supporting documents, except for the name or address of any contributor to the organization. For example, the annual information return includes Schedule A of Form 990 containing supplementary information on IRC 501(c)(3) organizations, and those parts of the return that show compensation paid to specific persons (Part VI of Form 990 and Parts I and II of Schedule A of Form 990).

2. The term annual information return does not include Schedule A of Form 990-BL, Form 990-T, Exempt Organization Business Income Tax Return or Form 1120-POL, U.S. Income Tax Return For Certain Political Organizations.
 3. For purposes of IRC 6104(e) and the proposed regulations, an annual information return does not include the return of a private foundation. (See IRC 6104(d) and Regs. 301.6104(d)-1 for requirements relating to public disclosure of private foundation annual returns.)
 4. The term annual information return does not include any return after the expiration of 3 years from the date the return is required to be filed (including any extension of time that has been granted for filing such return) or is actually filed, whichever is later. If an organization has filed an amended return, however, the amended return must be made available for a period of 3 years beginning on the date it is filed with the Internal Revenue Service.
- Regional or district offices
 1. A regional or district office is any office of a tax-exempt organization, other than its principal office, that has-
 - a. 3 or more paid full-time employees; or
 - b. Paid employees, whether part-time or full-time, whose aggregate number of paid hours a week are normally at least 120.
 2. A site is not considered a regional or district office, however, if-
 - a. The only services provided at the site further exempt purposes (such as day care, health care or scientific or medical research); and
 - b. The site does not serve as an office for management staff, other than managers involved solely in managing the exempt function activities at the site.

(3) Public Inspection of Annual Information Returns and Applications for Tax Exemption

Prop. Regs. 301.6104(e)-1(c) restates certain provisions previously set forth in Notice 88-120 regarding the public inspection of annual information returns or applications for exemption. These provisions are summarized in section 2, *supra*, and were discussed in the 1997 CPE, Publicity and Disclosure of Form 990, at p. 13.

C. The Requirement That Certain Copies Be Provided

As noted above, IRC 6104(e)(1)(A)(ii) now requires each tax-exempt organization that is not a private foundation to comply with requests, made either in writing or in person, for copies of the organization's three most recent annual information returns. IRC 6104(e)(2) requires all tax-exempt organizations (including private foundations) to provide, upon request, copies of the organization's application for tax exemption. Prop. Regs. 301.6104(e)-1(d) sets forth the special rules for complying with IRC 6104(e)(1)(A)(ii) and IRC 6104(e)(2).

Under Prop. Regs. 301.6104(e)-1(d) a tax-exempt organization must accept requests for copies made in person at the same place and time that it makes its documents available for public inspection. They must be made available at the organization's principal, regional and district offices. Although not stated in the proposed regulations, if a tax-exempt organization does not maintain a permanent office, as with the public inspection requirement, the organization may be required to accept requests made at a reasonable location of the organization's choice. An organization that has a permanent office, but has no office hours or has very limited hours during certain times of the year, may be required to respond to requests made during those periods when office hours are limited or not available as though it were an organization without a permanent office.

Prop. Regs. 301.6104(e)-1(d) provides that a tax-exempt organization may retain a local agent, within reasonable proximity of the applicable principal, regional or district office, to process in-person requests for copies of its documents. An agent that receives a request for copies must provide the copies within the time and under the conditions that apply to the organization itself. (See below). In addition, an office using an agent must immediately provide any in-person requester the name, address and telephone number of the local agent. An organization that is using an agent is not required to respond further to the person making the request, but the penalty provisions of IRC 6652(c)(1)(C), IRC 6652(c)(1)(D), and IRC 6685 apply to the organization if the agent fails to provide the documents as required under IRC 6104(e).

Prop. Regs. 301.6104(e)-1(d) (2), provides that the requirement of IRC 6104(e)(1)(A) means that, absent unusual circumstances, an in-person request must be fulfilled on the day the request is made. If an organization uses an agent to comply with in-person requests for copies, the agent must provide the copies to the person making the request on the day the agent receives the request. Where unusual circumstances make fulfilling a request made in person on the same business day an unreasonable burden, the organization may provide the copies on the next business day following the day of the request. According to the proposed regulations, unusual circumstances may include, but are not limited to, receipt of a volume of requests that exceeds the organization's daily capacity to make copies; requests received shortly before the end of regular business hours that require an extensive amount of copying; or requests received on a day when the organization's managerial staff is conducting special duties, such as student registration, rather than its regular administrative duties.

When a request is made in writing, IRC 6104(e)(1)(A) and Prop. Regs. 301.6104(e)-1(d)(2) require that a tax-exempt organization furnish the copies within 30 days from the date it receives the request. The proposed regulations apply special rules if an organization requires the payment of a fee for providing copies. (See below). A tax-exempt organization must honor a written request for a copy of the documents that the organization is required to provide under IRC 6104(e) if the request

- (1) is addressed to, and delivered by mail, electronic mail, facsimile, a private delivery service (as defined in IRC 7502(f)), or in person, to the principal, regional or district office of the organization; and
- (2) sets forth the address to which the copy of the documents should be sent.

Absent evidence to the contrary, a request or payment that is mailed is considered to be received by an organization 7 days after the date of the postmark. Requests transmitted to the organization by electronic mail or facsimile are considered received the day the request is successfully transmitted. Copies are considered provided on the date of the postmark or private delivery mark (or if sent by certified or registered mail, the date of registration or the date of the postmark on the sender's receipt). If an individual making a request consents, a tax-exempt organization may provide a copy of the requested document by electronic mail. In such case, the material is provided on the date the organization successfully transmits the electronic mail.

As with in-person requests, a tax-exempt organization may retain an agent to process written requests for copies of its documents. Once again, the agent must provide the copies within the time and under the conditions that apply to the organization itself. However, if the organization itself receives the request, and then forwards it to the agent, the deadline for

response is the day the organization received the request, not when the agent received the request. As with in-person requests handled by an agent, an organization that transfers a written request to an agent is not required to respond further but is subject to the penalty provisions of IRC 6652(c)(1)(C), IRC 6652(c)(1)(D), and IRC 6685, if the agent fails to provide the copies as provided by IRC 6104(e).

Under Prop. Regs. 301.6104(e)-1(d)(3) a tax-exempt organization is required to honor a request for all or part of its annual information returns or application for exemption. A request for a copy of less than the entire application or return must describe the information desired in sufficient detail to enable the organization to identify the desired part of the applicable document without placing an unreasonable burden upon the organization.

Prop. Regs. 301.6104(e)-1(d)(4) establishes the reasonable fee a tax-exempt organization may charge for providing copies of its information returns or application for exemption as no more than the per-page copying fee charged by the Internal Revenue Service for providing copies to a requester, as set forth in Regs. 601.702(f)(5)(iv)(B)), plus actual postage costs if a copy is provided by mail.

Prop. Regs. 301.6104(e)-1(d)(4) permits a tax-exempt organization to require that an individual requesting copies of documents pay the fee before it provides the documents. If an organization requiring advance payment receives a written request with no or insufficient payment, the organization must notify the person making the request within seven days from the date it receives the request of its prepayment policy and the amount due. The organization must then provide the copies within 30 days from the date it receives payment. The organization may disregard the request, if the requester does not pay the fee within 30 days of the notice.

If a tax-exempt organization does not require prepayment and the a request does not enclose payment, the organization must obtain consent from the person making the request before providing copies if the fee charged for copying and postage will be exceed \$20. A tax-exempt organization must also answer any questions concerning its fees for copying and postage. For example, the organization must tell a person who wishes to make a request of its charge for copying and mailing its application for exemption and each annual information return, with and without attachments, so the person may include payment with the request.

The proposed regulations provide special rules for regional and district offices and for local or subordinate organizations that do not file their own annual information return. Under Prop. Regs. 301.6104(e)-1(e), a regional or district office of a tax-exempt organization must satisfy the same rules as the principal office with respect to public inspection and providing copies of its application for tax exemption and annual information returns. However, a

regional or district office is not required to make its annual information return available for inspection or for providing copies until 30 days after the date the return is required to be filed (including any extension) or is actually filed, whichever is later.

A local organization that does not file its own annual information return (because it is affiliated with a central organization that files a group return pursuant to Regs. 1.6033-2(d)) must make the central organization's annual information returns available. However, a local organization is not required to make the central organization's annual information return available for inspection or provide copies until 30 days after the later of the date the return is required to be filed (including any extension) or the date the return is actually filed by the central organization. If a subordinate organization is covered by a group exemption letter, the application for tax exemption the subordinate organization must make available for public inspection and furnish in response to requests for copies is the application submitted to the Internal Revenue Service by its parent or supervisory organization to obtain the group exemption letter, as well as any additional documents submitted to cover the subordinate organization under the group exemption letter.

D. Making Annual Information Returns and Applications for Tax Exemption
Widely Available

Section 1313(a)(3) of the TBOR2 added IRC 6104(e)(3) which provides that the requirement to provide copies of an organization's annual information return or application for tax exemption "...shall not apply to any request if, in accordance with regulations promulgated by the Secretary, the organization has made the requested documents widely available...."

Prop. Regs. 301.6104(e)-2 describes a method for an organization to make its annual information returns or application for tax exemption 'widely available', thereby avoiding the requirement to provide copies on request. Prop. Regs. 301.6104(e)-2(a), however, makes it clear that an organization that makes its application or return widely available must nevertheless make the application or return available for public inspection as required under IRC 6104(e)(1)(A)(i) or IRC 6104(e)(2)(A).

(1) Posting on the Internet

Prop. Regs. 301.6104(e)-2 provides that an organization can make its annual information returns or application for tax exemption widely available by posting the applicable document on the organization's World Wide Web page on the Internet or by having the applicable form posted on a Web page established and maintained by another entity "...as part of a database of similar documents of other tax-exempt organizations." The proposed regulations do not specify who will be permitted to become the 'other entity' that will establish or maintain the envisioned 'database of similar documents of other tax-exempt organizations'.

For an application or return to be widely available through an Internet posting, the entity maintaining the World Wide Web page must have procedures to ensure the reliability and accuracy of all applications or returns that it posts on the page and must take reasonable precautions to prevent alteration, destruction or accidental loss. The proposed regulations do not mandate any particular procedures.

The proposed regulations provide that an annual information return or application for tax exemption posted on the web will be considered widely available only if:

- it is posted in the same format used by the Internal Revenue Service to post forms and publications on the Internal Revenue Service World Wide Web page;
- the World Wide Web page through which it is available clearly informs readers that the document is available and provides instructions for downloading it;
- when downloaded and printed in hard copy, the application or return is in substantially the same form as the original application or return, and contains the same information provided in the original application or return filed with the Internal Revenue Service except the names and addresses of contributors listed on the annual information return which are withheld pursuant to IRC 6104(e)(1)(C), and information on the application for tax exemption required to be withheld under IRC 6104(a)(1)(D) (trade secrets and similar information)); and
- a person can access and download the application or return without paying a fee to the organization maintaining the World Wide Web page.

Prop. Regs. 301.6104(e)-2 requires a tax-exempt organization that has made its application for tax exemption or annual information return widely available to inform any individual requesting a copy where the documents are available, including the address on the World Wide Web, if applicable. The organization must inform in-person requesters at the time of the request, and must respond to written requests within seven days of receipt.

(2) Other Methods of Making Documents Widely Available

The proposed regulations authorize the Commissioner to identify additional ways organizations can make documents widely available, and invites comments suggesting additional methods, such as a clearinghouse. Identification of additional methods will be done by revenue procedure or other guidance, and will not require amendment of the regulations.

E. Tax-Exempt Organizations Subject to Harassment Campaigns

Section 1313(a)(3) of TBOR2 added IRC 6104(a)(3) to prevent abuse of the new requirement to provide copies by persons who are a part of a campaign to harass and disrupt a tax-exempt organization by requesting many copies of annual returns or exemption applications. The section allows an organization to request a determination by the IRS that requests are part of a harassment campaign. It is not, however, a means for a tax-exempt organization to prevent disclosure of either its annual returns or application for exemption.

IRC 6104(e)(3) provides that the requirement to provide copies of an organization's annual information return or application for tax exemption "...shall not apply to any request if the Secretary determines, upon application by an organization, that such request is part of a harassment campaign and that compliance with such request is not in the public interest."

Prop. Regs. 301.6104(e)-3, provides that, if the Key District Director for the Key District where a tax-exempt organization's principal office is located determines that the organization is the subject of a harassment campaign and compliance with the requests that are part of the harassment campaign would not be in the public interest, a tax-exempt organization is not required to fulfill any request that it reasonably believes is part of the campaign.

Prop. Regs. 301.6104(e)-3 interprets the harassment campaign exception and describes the circumstances that will support a determination that requests are part of a harassment campaign. Under Prop. Regs. 301.6104(e)-3, a prerequisite for a harassment campaign is the receipt by the organization of a 'group of requests' for its annual information returns or application for tax exemption. Except for multiple requests from a single individual or address, the proposed regulations do not quantify how many or how few requests constitute a 'group of requests' or specify the time period over which a 'group of requests' is measured. The relevant question is whether the number of requests would place enough burden on the tax exempt organization to disrupt its activities. Once a 'group of requests' has been identified, the question is whether the group of requests was made to harass the organization. Determining harassment requires considering all the facts and circumstances.

A group of requests for an organization's application for tax exemption or annual information returns may constitute a harassment campaign if the relevant facts and circumstances indicate that the requests are part of a single coordinated effort to disrupt the operations of the organization rather than to collect information about it. Relevant facts and circumstances include:

- a sudden increase in the number of requests;
- an extraordinary number of requests made through form letters or similarly worded correspondence;
- evidence of a purpose to deter significantly the organization's employees or volunteers from pursuing the organization's exempt purpose;
- requests that contain language hostile to the organization;
- direct evidence of bad faith by organizers of the purported harassment campaign;
- evidence that the organization has already provided the requested documents to a member of the purported harassing group; and
- a demonstration by the tax-exempt organization that it routinely provides copies of its documents upon request.

The proposed regulations do not directly address the second standard in IRC 6104(a)(3), that compliance with a request is not in the public interest. Presumably, if the Key District Director finds that a harassment campaign exists, a strong showing that requiring a tax-exempt organization to honor the requests would be in the public interest would be necessary to justify the burden on the tax-exempt organization.

A tax-exempt organization may apply for a determination that it is the subject of a harassment campaign by submitting a signed application to the Key District Director for the Key District where its principal office is located. The application must contain a written statement giving the organization's name, address, employer identification number, and the name, address and telephone number of the person to contact regarding the application, and describing in detail the facts and circumstances that the organization believes support a determination that it is subject to a harassment campaign.

A tax-exempt organization may refuse requests for copies based on its reasonable belief that the requests are part of a harassment campaign if it files for a harassment determination within five days of the date it first refuses to honor a request that is part of the alleged harassment campaign. In addition, the organization may suspend compliance with any request it reasonably believes to be part of a harassment campaign until it receives a response to its application for a harassment campaign determination. However, it may not refuse to fill requests that are not part of the campaign.

If a Key District Director determines that a tax-exempt organization is the subject of a harassment campaign, the organization is not required to comply with any request for copies that it reasonably believes is part of the campaign. This determination may be subject to other terms and conditions imposed by the Key District Director. In any event, the organization must fulfill requests for copies that are unrelated to the harassment campaign. The proposed regulations provide that penalties under IRC 6652(c)(1)(C), IRC 6652(c)(1)(D) and IRC 6685 are suspended during the Key District office's consideration of an organization's request for a harassment campaign determination, unless the Key District Director determines that the organization did not have a reasonable belief that it was subject to a harassment campaign, or that it did not have a reasonable belief that a particular request was part of the campaign.

If the Key District Director determines that a tax-exempt organization is not the subject of a harassment campaign, the penalties under IRC 6652(c)(1)(C), IRC 6652(c)(1)(D) or IRC 6685 for failing to timely provide a copy of documents will not be imposed with regard to a failure to provide a copy in response to a request covered in a harassment determination, provided that the tax-exempt organization subsequently fulfills the request within 30 days of receiving the determination.

In addition to describing the procedures for a determination by the Key District Director that a tax-exempt organization is the subject of a harassment campaign, the Prop. Regs. provide a special rule for multiple requests from a single individual or address. Under Prop. Regs. 301.6104(e)-3(c) a tax-exempt organization may disregard any request for copies of all or part of any document beyond the first two received within any 30-day-period, or the first four received within any one-year-period, from the same individual or the same address, regardless of whether the Key District Director has made a determination that the organization is subject to a harassment campaign.

5. Effective Date and the Final Regulations

As provided in the statute, the new requirements will become effective beginning 60 days after their publication as final regulations in the Federal Register. The Notice of Proposed Rulemaking and Notice of Public Hearing was published on September 26, 1997. Comments

were received and a public hearing was held on February 4, 1998, at the IRS National Headquarters in Washington, D.C. Issuance of the final regulations is on the 1998 Treasury/IRS Business Plan.

6. Enforcement Provisions

To encourage compliance with the new disclosure provisions, Congress increased the penalties for failure to comply with the disclosure requirements of IRC 6104(d) or IRC 6104(e) (as well as the penalty for failure to file Form 990¹). The increases in these penalties are not addressed in the new proposed regulations.

Section 1313(b) of the TBOR2 increased the penalty imposed under IRC 6685 on tax-exempt organizations that willfully fail to allow public inspection of their annual information returns or application for tax exemption under IRC 6104(d) or IRC 6104(e) to \$5,000. The penalty under IRC 6652(c)(1)(C) imposed on tax-exempt organizations that fail to allow public inspection or provide copies of certain annual information returns under IRC 6104(d) or IRC 6104(e)(1) and the penalty under IRC 6652(c)(1)(D) for failure to allow public inspection or provide copies of applications for tax exemption under IRC 6104(e)(2) were increased by a technical correction contained in the Small Business Job Protection Act of 1996, when a drafting error dropped the provision from the TBOR2. The penalty under IRC 6652(c)(1)(C) was increased from the prior-law level of \$10 per day for each day during which such failure continues (with a maximum of \$5,000 with respect to any one return) to \$20 per day (with a maximum of \$10,000). The penalty under IRC 6652(c)(1)(D) was increased from the prior-law level of \$10 per day for each day during which such failure continues to \$20 per day. In addition, the IRC 6685 penalty for willful failure to allow public inspections or provide copies is increased from the present-law level of \$1,000 to \$5,000.

¹ Section 1314 of the TBOR2 increased the section 6652(c)(1)(A) penalty imposed on a tax-exempt organization that either fails to file a Form 990 in a timely manner or fails to include all required information on a Form 990 from the prior-law level of \$10 for each day the failure continues (with a maximum penalty with respect to any one return of the lesser of \$5,000 or five percent of the organization's gross receipts) to \$20 for each day the failure continues (with a maximum penalty with respect to any one return of the lesser of \$10,000 or five percent of the organization's gross receipts). For organizations with annual gross receipts in excess of \$1 million, the penalty is increased to \$100 per day with a maximum of \$50,000.

In an interesting approach to enforcement of the new disclosure provisions, Prop. Regs. 301.6104(e)-1(f) provides that an individual whose request for the opportunity to inspect an organization's annual information returns or application for exemption or whose request for a copy of those forms has been denied may alert the Service to the possible need for enforcement action. The individual may provide a statement to the Director, Exempt Organizations Division that describes the reason why the individual believes the denial was in violation of the requirements of IRC 6104(e).